



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/749,769	12/30/2003	Janko Budzisch	6570P054	1028
45062	7590	01/17/2008		
SAP/BLAKELY 1279 OAKMEAD PARKWAY SUNNYVALE, CA 94085-4040			EXAMINER ORR, HENRY W	
			ART UNIT 2176	PAPER NUMBER
			MAIL DATE 01/17/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No. 10/749,769	Applicant(s) BUDZISCH ET AL.	
	Examiner Henry Orr	Art Unit 2176	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 December 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3, 5-8, 10-13, 15-18, 20-23, 25-28 and 30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-8, 10-13, 15-18, 20-23, 25-28 and 30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/ are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>9/10/2007</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12/3/2007 has been entered.

1. This action is responsive to applicant's amendment dated 12/3/2007.
2. Claims 1-3, 5-8, 10-13, 15-18, 20-23, 25-28 and 30 are pending in the case.
3. Claims 4, 9, 14, 19, 24, 29, 31-49 are cancelled.
4. Claims 1, 11 and 21 are independent claims.

### **Applicant's Response**

5. In Applicant's response dated 12/3/2007, applicant has amended the following:
  - a) Claims 1, 2, 5, 7, 8, 10-12, 15-18, 20-22, 25, 27 and 30

Based on Applicant's amendments and remarks, the following rejections previously set forth in Office Action dated 8/30/2007 are withdrawn:

- a) 35 U.S.C. 112 2<sup>nd</sup> Rejection to claims 1-30

***Information Disclosure Statement***

6. The information disclosure statement (IDS) submitted on 9/10/2007 is in compliance with the provisions of 37 CFR 1.97. Accordingly, the examiner is considering the information disclosure statement.

***Specification***

7. The disclosure is objected to because it does not provide proper antecedent basis for the claimed subject matter (i.e., "article of manufacture"). That is, the Specification provides no guidance to the intended meaning of the phrase "article of manufacture." See MPEP 608.01(o).

Appropriate correction is required.

***Claim Rejections - 35 USC § 101***

8. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

9. **Claims 11-13, 15-18, 20-23, 25-28 and 30 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The language of the claims raises a question as to whether the claims are directed merely to abstract ideas that are not tied to a technological art, environment, or**

**machine which would result in a practical application producing a concrete, useful, and tangible result to form the basis of statutory subject matter under 35 U.S.C. 101. See MPEP § 2106**

Claim 11:

Claim 11, recite a **"article of manufacture"** comprises ONLY a medium "medium" that may be a signal or carrier as disclosed in the specification (see p. 44 par. 109). Claiming a signal per se is considered non-statutory subject matter because a signal is a form of energy. Thus, the recited **"article of manufacture"** is comprised merely of carrier wave signals and is not a process, a machine, a manufacture or a composition of matter.

Accordingly, the claim fails to recite statutory subject matter as defined in 35 U.S.C. § 101.

Claims 12, 13, 15-18 and 20:

Dependent claims 12, 13, 15-18 and 20 are rejected for fully incorporating the deficiencies of base claim 11.

Claim 21:

Claim 21, recite a **"system"** comprises ONLY a medium "medium" that may be a signal or carrier as disclosed in the specification (see p. 44 par. 109). Claiming a signal per se is considered non-statutory subject matter because a signal is a form of

energy. Thus, the recited **"system"** is comprised merely of carrier wave signals and is not a process, a machine, a manufacture or a composition of matter. .

Accordingly, the claim fails to recite statutory subject matter as defined in 35 U.S.C. § 101.

Claims 22, 23, 25-28 and 30:

Dependent claims 22, 23, 25-28 and 30 are rejected for fully incorporating the deficiencies of base claim 21.

### ***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. **Claims 1-3, 5-8, 11-13, 15-18, 21-23 and 25-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Naganathan, U.S. Published Application No. 2004/0139194, in view of Novaes, U.S. Patent No. 6,735,200 B1, in further view of Oliver et al. (hereinafter "Oliver"), U.S. Published Application No. 2003/0225876.**

Claim 1:

Naganathan teaches *"The consoles provide graphics visual representations of managed objects (for example, hosts and networks) to users of the network*

*management system 200" (see par. 32). "The managed objects are objects are arranged in a tree, showing a hierarchical relationship of the components. Within the MIB, managed objects are logically grouped into management modules that collectively implement management functions" (see par. 37). (claim 1; i.e., displaying a tree on a graphical user interface, said tree comprising: a first node that identifies a testing scenario for a business logic process; one or more sub nodes of said first node, each of said one or more sub nodes identifying a different software component of said business logic process)*

Examiner interprets the managed objects to be capable of representing a graphical hierarchical tree of applications or computing resources that also can display a lower hierarchy level of software components because the managed objects can be managed application software within an enterprise (see par. 002). Examiner also interprets the managed object to be a testing scenario because the managed object may be an application or network resource tested or monitored to determine the availability status.

Naganathan teaches *"managed objects are arranged in a tree, showing a hierarchical relationship of the components"* (see par. 37). **(claim 1; each of said one or more sub nodes capable of spawning its own sub tree that includes a node that identifies a computing system within which an instance of its sub node's corresponding software component is instantiated;)** Examiner interprets that the hierarchical tree of the managed objects is capable of displaying a sub node spawning its own sub tree because the hierarchical tree may be comprised of multiple sub nodes

demonstrating hierarchical relationships on different hierarchical levels of the hierarchical tree (see abstract, par. 37). The managed objects sub nodes are capable of identifying a computing system within which an instance of its sub node's corresponding component is instantiated because Naganathan anticipates managing objects representing software components such as applications within an enterprise (see par. 002).

Naganathan teaches *"allows users to monitor network resources to determine the status of the resources and when the resources are unavailable, the reason for the unavailability"* (see par. 12). **(claim 1; an availability node that indicates said instance is unavailable when said instance is unavailable)** Examiner interprets the managed objects to be represented as nodes and sub nodes of a graphical hierarchical tree. Naganathan anticipates monitoring managed objects that represent resources such as network resources and applications within an enterprise to determine their availability status (see par. 002, par. 12).

Neither Naganathan nor Novaes expressly teach indicating the availability status of a managed object with different colors.

However, Oliver Figure 9 illustrates a color menu palette that can be used by the user to select any color to customize the color of the display of a performance metric such as the availability status of an application (see abstract, par. 26, par. 55, Figures 8 and 9). **(claim 1; i.e., said indication that said instance is unavailable being made**



**with a color that is different than another color used to indicate said instance is available when said instance is available;)**

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the displayed tree of managed objects (i.e., application software component nodes) as taught by Naganathan to include nodes at the sub node position that presents heartbeat datagram text messages provided by a verification message as taught by Novaes and to customized the verification message to include a performance metric such as the availability status of an application that would indicate unavailability as one color and availability as a different color using the color menu palette as taught by Oliver to provide the benefit of allowing users to easily monitor and distinguish the availability status of network resources (Naganathan; par. 12) (Novaes; col. 4 lines 9-25, col. 16 lines 5-25) (Oliver; par. 5).

Naganathan fails to expressly teach nodes presenting text messages.

However, Novaes teaches *"The node in the subnetwork multicast a verification message over the subnetwork in which it is attached"* (see col. 4 lines 43-46).

**(claim 1; i.e., a heart beat node that displays text contained in a message received from a network, said message pertaining to said instance and part of said testing scenario;)**

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the displayed tree of managed objects (i.e., application software component nodes) as taught by Naganathan to include nodes that present

heartbeat datagram messages in text form as taught by Novaes to provide the benefit of communicating to the users the availability status of network resources (Naganathan; par. 12) (Novaes; col. 4 lines 9-25).

Examiner interprets the multicast or "displayed" verification message by the node to include a short status datagram message called a heartbeat that indicates the status of a node ("heart beat node"). Examiner also interprets the content of the datagram to be in text form.

Neither Naganathan nor Novaes expressly teach displaying a feature on a graphical user interface apart from said tree regarding non-working testing scenerios for other business logic processes.

However, Oliver teaches a message queue feature that publishes performance metrics regarding non-working testing scenarios for other business logic processes apart from hierarchical tree on a graphical user interface (see abstract, par. 6, par.22 par. 25, par. 29, Figure 9). **(claim 1; i.e., displaying a feature on said graphical user interface apart from said tree, said feature showing non working testing scenarios for other business logic processes.)**

Examiner interprets determining the availability status of applications to be a "test scenario" because the user is allowed to poll, check or test the application to determine the availability status. The applications are interpreted to be resources that are capable of being used for business logic processes. Therefore, the message queue publishing performance metrics (e.g., unavailable, errors) that represent a "non-working"

application capable of being used in a business logic process is interpreted to read on showing non working testing scenarios for other business logic processes as recited in claim 1.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the displayed tree of managed objects (i.e., application software component nodes) as taught by Naganathan in view of Novaes to include a message queue as taught by Oliver to provide the benefit of outputting an on-line analytical processing report or alarm messages about monitored resources (see Oliver; par. 27, par.52).

Claims 2 and 3:

Neither Naganathan nor Novaes expressly teach availability as a percentage over a fixed time interval.

However, Oliver teaches *"network elements may be monitored by, for example, polling them in five minute intervals"*, *"polling operation may be configured to retrieve from the monitored network elements performance metrics"* (i.e., application availability) (see par. 22) and *"a different color is assigned to each performance level between 0% and 100% in increments of 10"* (see par. 26). **(claim 2; i.e., wherein said availability node indicates availability as a percentage.) (claim 3; i.e., wherein said percentage is calculated over a fixed time interval.)**

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the displayed tree of managed objects (i.e., application

software component nodes) as taught by Naganathan to include an indication of the availability status of any node as taught by Novaes and to represent the availability as a percentage over a fixed time interval as taught by Oliver to provide the benefit of allowing users to easily measure and monitor the availability of network services (see Oliver; abstract, par. 22, par.26).

Claim 5:

Naganathan does not expressly teach presenting text messages that was sent over a network.

However, Novaes teaches *"Heartbeat—the verification messages sent in a communication network, or in a distributed computing system to determine operational status of hardware at one or more nodes"* (col. 6 lines 31-34). **(claim 5; i.e., wherein said message was sent over a network within an IS infrastructure from a location where said one or more software components were tested for availability.)**

Examiner interprets the "heartbeat" to be a datagram in text form corresponding to the status of resource provided in a verification message. Examiner also interprets the communication network to be capable of functioning as a network within an Information System infrastructure.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the displayed tree of managed objects (i.e., application software component nodes) as taught by Naganathan to include nodes at the sub node position that presents heartbeat datagram messages in text form sent over a network as

taught by Novaes from the network resources (i.e., application software components) tested for availability as taught by Naganathan to provide the benefit of allowing users to monitor the availability of network resources. (Naganathan; par. 12) (Novaes; col. 4 lines 9-25, col. 16 lines 5-25)

Claim 6:

Neither Naganathan nor Novaes expressly teach a message comprising of an xml document.

However, Oliver teaches *"In step 715, the performance metrics are translated according to a schema prior to transmission over the performance message queue. The translation may be made according to any convenient schema. According to one embodiment of the present invention, the translation is made into an XML format. Subsequently in step 720, the polling agent publishes the performance metrics as XML messages over the performance queue. The performance messages are read by the performance monitor and the archive 205 which stores the performance metric data in an archival format as previously described"* (see par. 53). **(claim 6; i.e., wherein said message further comprised an .XML document.)** Examiner interprets the performance message to be compatible with a XML document because the performance metrics inside the performance message are translated into XML format.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the displayed tree of managed objects (i.e., application software component nodes) as taught by Naganathan to include nodes that presents

heartbeat datagram messages in text form provided by a verification message as taught by Novaes in which the verification message is modified to include performance metrics translated in XML format as to be inherently compatible with a XML document as taught by Oliver to provide the benefit of having a known format and structure that easily permits the extraction of network element identifiers and associated performance metrics to be periodically published over a network message queue to users monitoring and measuring the availability of network resources (Naganathan; par. 12) (Novaes; col. 4 lines 9-25, col. 16 lines 5-25) (Oliver; par. 7, par. 24).

Claim 7:

Neither Naganathan nor Novaes expressly teach a text message that indicates a software component as unavailable.

However, Oliver teaches *"messages may be in the form of textual warnings"* (see par. 39). **(claim 7; i.e., wherein said message further included an indication that the particular software component instance to which said text is presented in reference to is unavailable.)**

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the displayed tree of managed objects (i.e., application software component nodes) as taught by Naganathan to include nodes at the sub node position that presents heartbeat datagram messages in text form provided by a verification message as taught by Novaes and to customized verification message to include textual warnings about the availability of an network element to provide the

benefit of allowing users to monitor the availability of network resources. (see Oliver; par. 39)

Claim 8:

Neither Naganathan nor Novaes expressly teach a text message presented in the color red.

However, Oliver Figure 9 illustrates a color menu palette that can be used by the user to select any color including red to customize the color of a text message that is generated by a shell script. **(claim 8; i.e., wherein said text is presented in the color red.)**

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the displayed tree of managed objects (i.e., application software component nodes) as taught by Naganathan to include nodes at the sub node position that presents heartbeat datagram messages in text form provided by a verification message as taught by Novaes and to customized verification message to include textual warnings in the color red using the color menu palette as taught by Oliver to provide the benefit of allowing users to easily monitor and distinguish the availability status of network resources (Naganathan; par. 12) (Novaes; col. 4 lines 9-25, col. 16 lines 5-25) (Oliver; par. 5).

Claims 11-13 and 15-18:

Claims 11, 12, 13, 15, 16, 17, and 18 include a program embodied on a computer readable medium to implement the steps that are substantially encompassed in method claims 1, 2, 3, 5, 6, 7 and 8 respectively; therefore the claims are rejected under the same rationale as method claims 1, 2, 3, 5, 6, 7 and 8 above.

Claims 21-23 and 25-28:

Claims 21, 22, 23, 25, 26, 27 and 28 are system claims and are substantially encompassed in method claims 1, 2, 3, 5, 6, 7 and 8 respectively; therefore the system claims are rejected under the same rationale as method claims 1, 2, 3, 5, 6, 7 and 8 above.

**12. Claims 10, 20 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Naganathan, U.S. Published Application No. 2004/0139194, in view of Novaes, U.S. Patent No. 6,735,200 B1, in further view of Oliver et al. (hereinafter "Oliver"), U.S. Published Application No. 2003/0225876, in further view of Walker et al. (hereinafter "Walker"), U.S. Patent No. 6,061,723.**

Claim 10:

Naganathan, Novaes, and Oliver fail to expressly teach said feature to be a second tree.

However, Walker teaches *"Root cause failures and inaccessible interfaces on critical server nodes are displayed in red to indicate Down status"* (see col. 4 lines 15-28). Examiner interprets the root cause failure to be a primary failure that indicates a



network element (e.g., an application or "testing scenario") as non working instead of just being inaccessible or unavailable.

Walker also teaches "Information which is not critical to a network administrator may be suppressed, and then viewed in a "drill down" of a particular network interface.

**(claim 10; i.e., wherein said feature is a second tree).**

Examiner interprets the "drill down" display to be a tree because a user can "drill down" to different hierarchal levels. Therefore, the drill down display as taught by Walker may indicate primary failures ("non working elements") and the graphical tree as taught by Naganathan in view of Novaes may indicate the availability status. Thus, having both trees would provide the benefit of distinguishing between primary failures such as non working elements and secondary failures such as unavailable elements.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the displayed tree of managed objects (i.e., application software component nodes) as taught by Naganathan in view of Novaes and to replace the message queue capable of publishing performance metrics regarding availability status as taught by Oliver with the drill down display that includes root cause failures nodes that indicates a network element as non working as taught by Walker to provide the benefit of distinguishing between broken and inaccessible network elements to quickly begin working on the problem (see Walker, col. 3 lines 20-25).

Claim 20:

Claim 20 includes a program embodied on a computer readable medium to implement the steps that are substantially encompassed in method claim 10; therefore the claim is rejected under the same rationale as method claim 10 above.

Claim 30:

Claim 30 is a system claim and is substantially encompassed in method claim 10; therefore the system claim is rejected under the same rationale as method claim 10 above.

### ***Response to Arguments***

13. Applicant's arguments filed 12/03/2007 have been fully considered but they are not persuasive.

Prior Art Rejections under 103(a):

Applicant argues Naganathan is strictly limited to monitoring a network - not business logic software. As such, Naganathan does not appear to disclose any subject matter pertaining to "software components of a business logic process" (see Response 11 last full paragraph).

Examiner respectfully disagrees.

Naganathan discloses problems within the background art such as *"Information Technology organizations face difficult challenges in managing the availability of applications and computing resources"* (see par. 002).

Naganathan discloses computing resources to support global business operations (see par. 002).

In discussing the problems, Naganathan discloses that *"it is crucial both to manage and monitor the availability of applications and data, as well as the availability of individual systems and networks"* (see par. 5).

Examiner submits that one of ordinary skill in the art, having Naganathan reference before him, at the time of the invention was made, would have understood that monitoring network availability as disclosed by Naganathan includes monitoring applications ("software components") availability within the network that support global business operations ("business logic processes").

Therefore, Naganathan does disclose subject matter pertaining to "software components of a business logic process" as recited in independent claim 1.

Applicant argues that nothing in paragraph [0012] of Naganathan discloses the specifics of a GUI in sufficient detail to cover the claim element "... each of said one or more sub nodes capable of spawning its own sub node". The Applicant notes that this

element is directed to the visual experience of a user of the GUI (i.e., the user can see a sub node spawned by another sub node). Paragraph [0012] of Naganathan is not directed to a GUI and cannot possibly disclose the specific GUI experience this claim element pertains to (see Response p. 12 1st full paragraph).

Examiner respectfully disagrees.

Examiner notes that although the Examiner occasionally cites parts of the reference for the convenience of the Applicant, the Applicant should also consider the entire (e.g. both cited and un-cited portions) disclosure of Naganathan.

Naganathan discloses consoles for providing visual representations of managed objects to users (see par. 7).

Naganathan discloses the managed objects are arranged in a tree, showing a hierarchical relationship of the components (see par. 37).

Examiner interprets the hierarchical relationship that is showed by the managed objects to include a least one managed object on a higher level than another managed objects arranged in the tree.

Examiner submits that one of ordinary skill in the art, having Naganathan reference before him, at the time of the invention was made, would have understood that generating a tree with multiple hierarchical levels on a GUI console allows a user to

visualize a managed object ("sub node") spawned by another managed object ("sub node").

Therefore, Naganathan's console is directed to a GUI console and the generated hierarchical tree of managed objects in the GUI console is capable of displaying a sub node spawning its own sub node as recited in independent claim 1.

Applicant arguments with respect to claims 2-3, 5-8, 10-13, 15-18, 20-23, 25-28 and 30 are substantially encompassed in the arguments under 35 U.S.C 103(a) above, therefore examiner responds with the same rationale as stated above.

### ***Conclusion***

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Henry Orr whose telephone number is (571) 270 1308. The examiner can normally be reached on Monday thru Friday 8 to 4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Doug Hutton can be reached on (571) 272-4137. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Application/Control Number:  
10/749,769  
Art Unit: 2176

Page 21

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

1/15/2008  
HO

*/Doug Hutton/*  
Doug Hutton  
Supervisory Primary Examiner,  
Technology Center 2100